

some lacked a formal telemarketing program.

In several instances, staff determined, branch office managers bear responsibility for supervising compliance, that is, ensuring that RRs check the DNCL prior to initiating a call. Three firms provided no responses or unresponsive replies to this question. On the whole, responses to this question tended to be unexceptional.

#### Question 5

Question 5: Currently, how many names do you have on your "do-not-call" list? How do you ensure that the list is completely up-to-date?

The names reported on DNCLs, staff found, fell into eight ranges, with a striking majority of twenty-six (26) firms occupying the three lowest ranges, 0 to 10, four (4) firms, 11 to 100, seventeen (17) firms, 101 to 500, five (5) firms. In fact, two broker-dealers had no names on their DNCLs. What is more, one of these firms did not maintain a DNCL but maintained what it described as a "can call" list. According to its initial response to the Subcommittee's inquiry, Firm N's procedures consisted of restricting its telemarketers to using a controlled database of telephone numbers obtained from an independent vendor, as opposed to maintaining a DNCL. Information is "washed" through an in-house database, which contains both subscriber lists provided by various states (where applicable) and the names that Firm N adds manually to its files as requested by clients when first called. However, when Subcommittee staff, in a telephone conversation with a firm representative on October 14, 1994, attempted to obtain the number of names that Firm N had added to its files, N's representative admitted that its files contained no names and conceded that the firm needed to begin maintaining a DNCL.

Unlike the telemarketing companies surveyed for the July 1994 Report, only two (2) retail broker-dealers indicated that they subscribed to the Direct Marketing Association's Telephone Preference Service List (DMATPSL). Two factors influenced the total of names reported by a small number of firms in their responses to this question, whether they subscribed to the Florida Asterisk List or Oregon Asterisk File or both.<sup>22</sup> Nine (9) firms indicated that they subscribed to either or both lists and reported totals reflecting this fact. Thus, total names on their DNCLs ranged from 25,001 to (approximately) 70,000.

The other four ranges were as follows: 501 to 1,000, three

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<sup>22</sup>At the time the survey was conducted, these lists contained, respectively, approximately 25,000 and 34,000 names.

(3) firms; 1,001 to 1,500, one (1) firm; 20,001 to 21,000, one (1) firm; over 70,001 two (2) firms. The DNCLs of the two firms in the over-70,001-range contained, respectively, 254,743 and 151,600 names, which also represented the highest and second-highest totals of names reported on a DNCL. The two firms reporting these totals had aggressive telemarketing programs but also included complete written policies and training materials in their responses.<sup>23</sup>

In this connection, it also is worth noting that one (1) broker-dealer that is a wholly-owned subsidiary of a larger company reported that the DNCL for the entire group of companies under the parent corporation contained a total of 2.8 million names. This high number of names is important for three reasons: 1) it confirms that the astonishing totals of names on several telemarketing companies' in-house "do-not-call" lists -- 2.3 million, 3.4 million, and 5.35 million, respectively, as noted in the July 1994 Report -- are far from anomalous or restricted to a few large telemarketing service bureaus; 2) it offers independent evidence from another industry (emphasis supplied) that consumers view such calls as an annoyance and really do mind being bothered at home, and in this way further debunks the telemarketing industry's arguments to the contrary; and 3) it forcefully underscores strong consumer interest in a national DNCL.

The extraordinarily low totals of names on an overwhelming majority of firms' DNCLs -- totals that are significantly lower by far than the low totals provided by many telemarketing companies in staff's earlier report<sup>24</sup> -- raise questions regarding the extent to which compliance with the TCPA is perfunctory on the part of RRs at certain retail brokerages. These questions also concern the level of compliance by small firms and independent broker-dealers with what arguably may be considered a small matter, annoyance telephone calls, but that can rapidly escalate, and has escalated, into more serious situations. One of the arguments frequently advanced by opponents of regulations protecting consumers/investors is the "tiny fraction" argument, as in: only a tiny fraction or minority of firms and individuals in the securities industry -- or in any industry -- engage in abusive cold-calling practices, and that as a result of their activities negative public perceptions and skepticism affect the entire industry. But the record of perfunctory compliance demonstrated by some industry

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<sup>23</sup>One (1) firm, a wholly-owned subsidiary of a larger parent, was unable to separate the number of names on its DNCL from that of its parent, and, therefore, was not included in the total of forty-three (43) firms required to respond to the Subcommittee's survey for this question only.

<sup>24</sup>See pp. 21-22.

leaders augurs ill for any comparable examination of the compliance record on this matter by the hundreds of firms (and thousands of individuals employed by them) that are not ranked in the "Top 50."

Staff found two firms that did not engage in telemarketing but, nevertheless, provided much useful information and, in some ways, more forthcoming responses than the majority of companies with active cold-calling programs. Although one firm has decided not to encourage the practice of cold-calling as a means of generating new business -- because it does not regard it as an efficient method of achieving its objectives at this time -- nevertheless, it has developed a hypothetical policy and full range of procedures in the event that it should decide to engage in telephone solicitation. In addition, Firm X has underscored its sensitivity to the initiative and importance of the TCPA by subscribing to the Florida Asterisk List (FAL), because it maintains an office in Florida. Firm X also distributed copies of its written policy to employees in each branch office and provided a copy of the policy together with its compliance manual at the time of hire. Since Firm X had no cold-calling program at the time of the survey, it provided no training materials or scripts.

Similarly, TCPA and FCC rules have limited applicability to Firm Y, because Firm Y does not make cold calls and its RRs call only existing shareholders or investors who have recently contacted Y to request information about its products, in other words, parties with an established business relationship. Firm Y markets its products primarily through direct mailings to investors and print advertising, rather than through telephone solicitation. Citing 47 CFR § 64.1200 (f)(4) -- where the FCC broadly defines the phrase, "established business relationship," to include "any prior or existing relationship formed by a voluntary two-way communication" between the caller and the called-party based upon "an inquiry, application, purchase or transaction" by the called party regarding products or services offered by the caller -- Firm Y has succeeded in excluding its telemarketing practices from any FCC requirements to maintain a DNCL or have a written policy. That is, Firm Y has had a two-way communication with the investor, initiated by the investor, for the purpose of inquiring about its products.

In short, Firm Y has exploited a hotly contested loophole in the FCC rules (see July 1994 Report, p. 16) to construct a high-volume telemarketing operation -- five (5) RRs routinely contact 1,500-2,000 investors per week (roughly 60-80 telephone calls per day) to follow-up on information requested from these investors in the previous two or three weeks -- that circumvents those very

rules.<sup>25</sup>

#### Question 6

Question 6: Please provide the Subcommittee with your written policy, as required by FCC regulations, for maintaining a "do-not-call" list. Also indicate the date this policy was drafted and went into effect.

All forty-three (43) firms required to have a written policy furnished copies of same, with most taking effect on or before the date mandated by the FCC for companies to comply with the TCPA. Only one firm seemed to have formulated an ad-hoc policy in response to the Subcommittee's request. In the case of several companies, their policies became effective during 1993.<sup>26</sup> However, numerous firms provided copies of their written policy that were so brief as to be incomplete or insufficiently specific with respect to compliance. As a typical example of their inadequacy, these policies fail to stipulate that RRs must identify themselves and the name of their firm and provide their address and telephone number when initiating a telephone cold call. Or they fail to note the restrictions placed on the use of facsimile machines, autodialers, or artificial or pre-recorded messages.

On the other hand, numerous companies provided clear and extensive, if not model, written policies on telemarketing. Smith Barney Shearson, Inc. and Lehman Brothers, Inc.

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<sup>25</sup>If an investor calls to inquire about mutual funds, Firm Y asks for the individual's telephone number. If the individual does not provide it or indicates that she or he does not wish to be called, Firm Y does not enter the number in its database. Thus, the individual will not be called to confirm whether literature was received. If an investor who originally provided Firm Y with her or his telephone number later requests that she or he not be called by the firm, the individual's name is removed from the database. Firm Y does not telephone these investors to follow-up on their requests for information. Each RR is responsible for deleting the names and telephone numbers of investors who request DNC status from the database. The database is the only "list" used to contact investors; hence, once an investor's name has been removed, she or he can not be contacted by telephone. No other lists are used and no cold-calling is performed.

<sup>26</sup>This high level of compliance contrasts favorably with that of the top telemarketers, as delineated in the July 1994 Report. In that report, nine (9) companies did not provide a written copy of their policy or indicate the date it was drafted or took effect.

particularly deserve to be singled out in this regard. As indicated above, however, the high level of compliance of a minority of companies with this provision of the law could not offset the inadequate policies of numerous companies surveyed. Overall, therefore, the industry as a whole earned a grade of C regarding compliance with this provision of the TCPA and FCC rules.

#### Question 7

Question 7: How many telephone solicitations do employees of your organization make in an average week? How many persons in your organization routinely make telephone solicitations? At what hours of the day do employees make telephone solicitations?

A majority, twenty-three (23), of the forty-three (43) firms responding to part one of this question did not provide figures or estimates of the number of cold calls made by their RRs. In addition, several firms did not provide estimates of the number of persons in their organizations who routinely make telephone solicitations, further narrowing the basis for statistical comparison. Still, numerous firms that indicated they could not provide an estimate conceded that their RRs made voluminous cold calls. Those firms that did provide estimates, however, fell into three groups. One, an overwhelming majority provided estimates that were so low, that they either undermined any pretense to credibility or conflicted with statements elsewhere in the bodies of their responses. Indeed, the responses of several firms evidenced both of these aspects. Two, a small minority of firms used telephone solicitation to a moderate degree, typically making approximately twenty (20) cold calls per day per RR. Three, a handful of firms employed telephone cold calls as a key marketing tool.

A single example will suffice to illustrate staff's contention concerning firms in the first group. Firm X, while keeping no data on the number of telephone solicitations to residences,<sup>77</sup> estimated that its entire (emphasis added) generalist sales force of 221 RRs made no more than three to four (3-4) calls in a week. Firm X contended that this seemingly low figure was due to: (1) the nature of its target client; (2) the extremely high level of service Firm X provides; and (3) the consensus opinion of its RRs that these calls are unproductive for its business. However, Firm X also stated that while any one of its 221 RRs "might make a call to a prospective client's residence, the majority of these calls would be made by 100 or so

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<sup>77</sup>Firm X indicated that its response to this question was based on comments made during telephone surveys of its RRs.

newer [RRs] who are most actively seeking new clients."<sup>28</sup> Similar internal inconsistencies -- apart from that between the number of cold calls made and the number of RRs who make them -- characterized several other responses to the Subcommittee's inquiry.

Further, concerning the low estimates provided by numerous firms, Firm A estimated that its 3,300 RRs<sup>29</sup> made on average five (5) cold calls per week or one (1) per business day. Firm B estimated four to eleven (4-11) cold calls per week for each of its 220 RRs, or roughly less than one to two (1-2) each per business day. Firm C estimated one to two (1-2) unsolicited calls per week for each of the twenty (20) RRs, out of approximately 300, authorized to make cold calls. Firm D estimated one (1) unsolicited call per week for each of its approximately 370 RRs authorized to engage in telephone solicitation, though only half actually do so.

From these low estimates, a casual observer not unreasonably might conclude that telephone solicitation played no or at best an insignificant role in developing new business by experts skilled in such development -- a conclusion that flies in the face of evidence to the contrary as well as statements of numerous industry leaders on the importance of cold-calling as a means for stimulating sales growth.<sup>30</sup> There also emerges from

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<sup>28</sup>Subcommittee staff also received specific information, in the form of constituent complaints about telemarketing to elected public officials, that RRs of the firm whose response is quoted above engaged in cold-calling.

<sup>29</sup>This number raises questions because it strikingly differs from the number of RRs published in the *SIA Yearbook* for both 1993-94 and 1994-95 for this firm.

<sup>30</sup>For example, according to a graphic in the *Wall Street Journal* article cited above (n.2), sales generated through telemarketing grew from \$100 billion to \$425 billion between 1984 and 1990. See also the rosy statistics on U.S. telephone marketing sales published by the Direct Marketing Association in its *Grassroots Advocacy Guide For Direct Marketers* (New York, 1994), pp. 73-74.

The excerpt that follows typifies the statements made by brokerage executives on the importance of telemarketing to their sales efforts:

Consistent with this [business] strategy is our policy of introducing our [RRs] to potentially new customers through unsolicited introductory telephone calls. We have found that introductory calls are an efficient, cost effective

these low figures a pattern of underreporting or underestimating elements that might cast sales practices in a negative light. To the extent it illustrates a mindset prevalent in the retail securities industry, one that is adverse to disclosing risk, this pattern of underestimating telephone sales calls raises concerns for investors, and serves to underscore for regulators the need to maintain constant and strict vigilance over the industry in order to protect investors.<sup>31</sup>

Fortunately, the handful of firms comprising the third group mentioned above provided statistics on telephone solicitation that are supported by both anecdotal and scientific evidence.<sup>32</sup> These firms use telephone cold calls as a key marketing tool. The figures are revelatory, in and of themselves. So, for example, Firm Z estimated that its telemarketing force of 150 RRs made approximately 375 cold calls each per week, or roughly 75 calls per business day, or over 2.8 million per year (based on 50 weeks). Firm U estimated that its 276 RRs made 65,760 cold calls per week, or roughly 48 each per business day, or nearly 3.3 million per year. Firm V estimated that, on average, each of its 285 RRs spends two hours per day making telephone solicitations, generating 50 calls per day, or over .7 million per year; Firm V also acknowledged that RRs new to the business would spend more time cold-calling than a more established RR.

The highest number of cold calls per capita made by a single firm -- which happens to rank among the top twenty brokerages -- amounted to approximately 165,750 to 221,000 calls per week, or an astonishing 150 to 200 calls per registered cold caller each business day in a telemarketing force of approximately 221 registered cold callers. This translates to a mind-boggling, 8.3 million to over 11 million per year calls to potential investors. What is more, these individuals work only between the hours of

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means to offer professional investment services to the many thousands of individuals who can benefit from the advice we offer....[M]any individuals respond by becoming [name of firm] customers.

<sup>31</sup>Staff made allowance for several facts before reaching these conclusions, for example, that established RRs at many firms serviced long-standing accounts as opposed to relying on extensive telephone solicitation; or that a firm employed targeted mailing programs and had extensive referral systems for marketing its products; or that a firm only recently and on a limited basis had begun to engage in cold-calling; or that consumers generally are unaware of the TCPA and FCC rules and their rights thereunder.

<sup>32</sup>See July 1994 Report, pp. ii, 3n.5; above, p. iii.

9:00 a.m. and 6:00 p.m. These figures approach what one might find in a "boiler-room operation"<sup>33</sup> -- although that description by no means applies to the firm that supplied them -- and perhaps are indicative of the true level of cold calls made by many broker-dealers, especially by those in the hundreds of smaller retail firms not ranked in the "Top 50." Finally, to illustrate this, the approximately 100 million telephone access lines in the nation have an approximately one-in-five chance of being cold-called at least once in a calendar year by an RR of just the four retail broker-dealers that employ telephone cold calls as a key marketing tool.<sup>34</sup>

Indeed, when automatic dialing technology is taken into consideration,<sup>35</sup> which increasing numbers of firms, particularly larger firms, have begun to use because of its effectiveness in increasing the number of potential calls, and which the figures cited above for Firm V -- 50 calls per day on average generated by each of its 285 RRs in two hours -- 150 to 200 cold calls per registered cold caller each business day may seem less astonishing.

The majority of unsolicited telephone solicitations were made during regular business hours (9 a.m. to 5 p.m.).

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<sup>33</sup>So, for example, in an article on telemarketing fraud that appeared in the *Los Angeles Times* of August 12, 1994, at E3, Karen Silva of the Arizona Corporation Commission's Securities Division is quoted as saying that "[a] regular boiler room (the nickname for a telemarketing scam operation) can make 150 calls on a good day." "THE GOODS: Smooth Operators." Similarly, according to the *Wall Street Journal* of March 23, 1992, at B5C, a SEC filing described how a former broker at Stratton Oakmont -- a company labeled as a boiler room in the SEC's civil complaint -- told the Commission that brokers are urged to make 100 to 400 calls a day each (emphasis supplied): "the rule of thumb is never, never hang up the phone until the person buys or dies." "SEC Says Stratton Oakmont Manipulates Stock Prices, Uses 'Boiler Room' Tactics."

<sup>34</sup>100 million divided by, roughly, 15 to 18 million, the aggregate figure of telephone cold calls made by the handful of firms that use telemarketing as a key sales tool.

<sup>35</sup>An example is predictive dialers, which speed-dial one telephone number after another, sending to live agents only the calls that answer.



Question 8

Please provide the Subcommittee with any additional information you feel would be helpful in showing your compliance with the T CPA.

Nearly a majority of the companies responding, seventeen (17), opted not to comment on this question. Of the twenty-six (26) that made some comment or other, most reiterated remarks made elsewhere in the body of their response. Only one (1) broker-dealer expressed criticism of any sort or hostility toward the legislation. Contrasting the number of individuals requesting DNC status (84) with the number of its active customer accounts (nearly 1.8 million) -- a number "undoubtedly...dwarfed by the number of individuals...solicited by our firm" -- a firm representative contended:

[T]he public interest in availing themselves [sic] of this legislation is infinitesimally low. We certainly believe the burden upon business and commerce in complying with this new layer of regulation in light of so little public participation is patently unwarranted.

Staff found the opposite to be true. Where securities firms expressed comments, they most often stated their approval of the T CPA and FCC rules and their sensitivity to both.

#### IV. Self-Regulatory Organizations

In the belief that the self-regulatory organizations (SROs) could play a useful role in the educational process that could help protect consumers from unwanted telephone calls while permitting legitimate telemarketing practices, on August 4 and 9, 1994, the Chairman asked nine (9) SROs to provide detailed information on what steps they had taken (or were planning) to educate member firms and their RRs about the requirements of the TCPA, and the FCC rules prescribed thereunder. Most SROs welcomed the opportunity to comment on the TCPA and its implications for the securities industry. In addition, the Chairman's letter produced the salutary effect of spurring several organizations to augment their educational efforts or to implement new initiatives on this matter.

The National Association of Securities Dealers (NASD) reported that it had informed its members of the cold-calling rule under the TCPA in a December 1992 article in its publication, *NASD Regulatory and Compliance Alert*. With a circulation of 45,000, the *Alert* is distributed to all NASD member main and branch offices, NASD staff and committee members, and state securities commissions. In addition, the *NASD District 1 Newsletter* of June 1994, which was distributed to approximately 3,500 main and branch offices of all member firms located in northern California, northern Nevada, and Hawaii, contained an article on the TCPA and the FCC rule under it. To underscore the importance of the TCPA and the need for compliance with this law by member firms, the NASD also published a follow-up article in its October, 1994 edition of the *Alert*. The article recapitulated the FCC rule requirements, defined cold call, noted the registration requirements covered by Schedule C of the NASD By-Laws, and advised that the recently passed Telemarketing and Consumer Fraud and Abuse Prevention Act (P.L. 103-27) would further regulate cold-call activities. This law requires the Federal Trade Commission (FTC) to enact cold-calling rules and directs the Securities and Exchange Commission (SEC) to adopt rules similar to those of the FTC.

The New York Stock Exchange (NYSE) reported that it lacks statutory authority to enforce compliance with the TCPA and FCC rules by its members and member organizations. However, given the Subcommittee's concerns, the NYSE engaged in discussions with SEC staff to determine what action it might take in relation to this issue. While the NYSE previously had not issued any educational circulars or notices on the subject, as a result of the Subcommittee's inquiry, on December 2, 1994, it distributed an information memorandum to its membership, discussing its position on the practice of cold-calling, the requirements of the TCPA, and the FCC rules promulgated thereunder and emphasizing the importance of members and member organizations maintaining policies and procedures to ensure compliance with those

requirements and of communicating the requirements to all (emphasis contained in text) personnel who deal with the public. The memorandum advised NYSE members and member organizations to review their current policies and procedures for monitoring compliance with those requirements. In addition, the memorandum included, as an attachment, a copy of the FCC Public Notice (DA 92-1716), dated January 11, 1993, concerning compliance with the TCPA and FCC rules.

Further, although the NYSE's examination program lacked a specific step to review for compliance with the TCPA and FCC rules, its field examination staff, during the course of routine annual sales practice examinations, reviews cold-calling activities at member organizations to ensure that such activity is properly supervised and comports with good business practices. In addition, the General Securities Registered Representative (Series 7) Qualification Examination item bank of questions, from which questions for the Series 7 Examination are selected, has been updated to include general questions on this subject matter to ensure that persons seeking registration as general securities representatives have knowledge of the TCPA and FCC rules.

As in the case of the NYSE and regional exchanges (see below), the American Stock Exchange (Amex) reported that its regulatory mandate does not clearly provide it with the statutory authority to enforce compliance by its members with the TCPA and FCC rules. However, the Amex indicated that it planned to work with the SEC and other SROs to determine whether any modifications to SEC or SRO rules in this area are warranted. In addition, while the Amex itself had not issued any notices or circulars, it had participated with various industry groups in efforts to educate member firms and RRs on the requirements of the TCPA and FCC rules, for example, through Legal Alert 92-17, which was issued by the Securities Industry Association on September 23, 1992, on the FCC's cold-calling rule; and, as noted above, through the recently updated General Securities Registered Representative Qualification Examination.

Pursuant to an agreement between the Amex and the NYSE under Rule 17d-1 of the Securities Exchange Act of 1934, the NYSE assumed responsibility for conducting equities sales practice examinations of dual NYSE-Amex member firms, which includes all the Amex member firms doing any significant amount of public customer business. Accordingly, the Amex has primary regulatory responsibility for conducting options related sales practice examinations pursuant to an agreement under Rule 17d-2 with all the other listed options exchanges and the NASD.<sup>36</sup>

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<sup>36</sup>The SROs strive to make the examination process efficient and to eliminate duplicative examinations, with their concomitant burden and expense, while helping to achieve effective oversight

At the time of the survey, the Philadelphia Stock Exchange (PHLX) had no member firms for which it was the designated examining authority (DEA) and on which the TCPA would have an impact. In this regard, the few firms that conduct business with customers on the PHLX's Foreign Currency Options Trading Floor deal exclusively with institutional and bank customers. The PHLX planned to continue to monitor its member firms for compliance with the TCPA.

Twelve of the member broker-dealers for which the Boston Stock Exchange (BSE) serves as the designated examining authority (DEA) either conduct business on the trading floor of the BSE exclusively, or conduct institutional business overseas. None of the twelve firms made unsolicited cold calls to public customers. Remaining BSE members, which may or may not conduct business with the public over the telephone, are regulated primarily by the NASD or other exchanges. Thus, because it was not the designated examining authority of these firms, the BSE was unable to comment on their compliance with the TCPA. There had been no instances of TCPA violations, or telephone misuse in any investigations conducted regarding the twelve firms assigned to the BSE.

Similarly, the Pacific Stock Exchange (PSE) is not the designated examining authority (DEA) for its member firms that do retail business. These firms are subject to examination by the NYSE and the NASD. On the other hand, the PSE members for which the PSE is the DEA do not have retail operations and are not engaged in telemarketing. Accordingly, the PSE has not examined, and has no plans to examine, those members for adherence to TCPA and FCC rules. Although it currently lacks the staff to do so, the PSE has under review a request from the Chairman of the SEC to adopt rules governing abusive cold-calling practices and to revise examination procedures to monitor compliance with the FCC rule.

At the time of the survey, the Municipal Securities Rulemaking Board (MSRB), a self-regulatory organization that establishes rules applicable to brokers, dealers, and municipal securities dealers in transactions involving municipal securities, had not disseminated any material to dealers regarding the TCPA. Inspection and enforcement functions relative to MSRB rules are carried out by other agencies. For example, for securities firms, the NASD, along with the SEC,

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of common members. At the present time, therefore, the parties to the options Rule 17d-2 agreement expect that any necessary examination with respect to the cold-calling rules will be undertaken by the SROs conducting equities sales practice examinations. In the matter of common rules such as the rules relating to the sales practices of RRs, the SROs have allocated examination responsibility for common members to a single SRO.

carry out these functions.<sup>37</sup> Although the MSRB focuses its educational efforts on explicating MSRB rules to its members and the public, it occasionally has republished important material produced by other agencies or organizations in its quarterly publication, *MSRB Reports*. Accordingly, the MSRB indicated that it would republish documents regarding the TCPA and associated rules that are prepared by the SEC or a relevant supervisory agency, to highlight this matter to municipal securities dealers.

In the case of the Chicago Stock Exchange (CHX), staff found that this SRO, while endorsing the goals of the TCPA and FCC rules, reported that it had a limited role in ensuring compliance with that law and regulations. No exclusive CHX member may have dealings with the general public. With respect to dual members of the CHX and NASD, the NASD has the primary responsibility for ensuring compliance by members with the TCPA and the rules adopted to implement it. As a result of the Chairman's letter and the urging of the SEC Chairman, however, the CHX was considering adopting rules, for its members, similar to the FCC's cold-calling rules and expected to file such rules with the SEC for its approval in the near future.

Like other SROs, the Cincinnati Stock Exchange (CSE) is not the designated examining authority (DEA) for the sales practices of its member firms. This responsibility is executed by SROs other than the CSE. Because of this fact, the CSE contends that it would not normally be directly involved in issuing regulatory bulletins concerning the TCPA and FCC rules. The CSE supported the SEC rule-making authority to facilitate efforts to eliminate inappropriate behavior in the securities industry, and promised its participation in such efforts.

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<sup>37</sup>15 U.S.C. sec. 78o-3(b) (2) (1988); 15 U.S.C. sec. 78u (1988).

## V. SEC Initiatives

As part of its general sales practices initiative, the Securities and Exchange Commission (SEC) has taken several steps to enhance inspections and examinations of RRs with large numbers of customer complaints, arbitration proceedings, or disciplinary actions. Among other things, the SEC also is planning a second joint regulatory examination sweep with the NASD, the NYSE, and the North American Securities Administrators Association (NASAA), which will focus on all firms,<sup>38</sup> large and small, and will target problem brokers throughout the industry. Significantly, the SEC is actively supporting the securities industry's continuing education requirements for RRs.

In response to the Subcommittee staff's July 1994 Report, the SEC wrote to the SROs concerning abusive cold-calling, recommending that they adopt a rule fashioned along the lines of the cold-calling rule established by the FCC and examination procedures be revised to monitor compliance with the FCC rule. In addition, the SEC intends to work in cooperation with the Federal Trade Commission to coordinate rulemaking efforts to prohibit deceptive and other abusive telemarketing practices, in accordance with the Telemarketing and Consumer Fraud and Abuse Prevention Act. Subcommittee staff welcomes these and other planned SEC efforts to promote pro-consumer awareness and consumer-friendly sales practices in the securities industry.

## Conclusion

This report answers the question raised in the July 1994 Report -- whether additional steps need to be taken to achieve a higher degree of compliance with the TCPA and FCC rules -- with a resounding affirmative. A first step would be to rescind the FCC rule requiring companies to maintain company-specific "do-not-call" lists -- which staff has determined are inherently ineffective -- and to work with citizens, public-interest groups, and businesses to forge an effective alternative. Staff believes that a national database, while not a panacea, will better serve the needs of businesses in any industry that heavily relies on telephone solicitation as a significant development tool, than the bewildering welter of thousands of individual DNCLs that now reigns; and, more importantly, better safeguard the privacy rights of millions of individual citizens that are regularly and continuously infringed by unwanted telephone sales calls.

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<sup>38</sup>With the exception of the nine largest broker-dealers examined in the SEC's "Large Firm Project."

## Appendix I

### Retail Firms Responding to Questionnaire

Advest Group, Inc.  
Robert W. Baird & Co.  
Bear Stearns  
J.C. Bradford & Co.  
Alex. Brown & Sons  
Chemical Securities  
Citicorp Investment Services  
Dean Witter Reynolds Inc.  
Donaldson, Lufkin & Jenrette  
A.G. Edwards, Inc.  
Fahnestock & Co.  
Fidelity  
First Investors Corporation  
First of Michigan Corporation  
Goldman Sachs Group, L.P.  
Gruntal Financial Corp.  
Hamilton Investments, Inc.  
J.J.B. Hilliard, W.L. Lyons  
Inter-Regional Financial  
Interstate/Johnson Lane  
Janney Montgomery Scott  
Edward D. Jones & Co.  
Kemper Securities, Inc.  
Kidder, Peabody & Co.  
John G. Kinnard & Co.  
Legg Mason  
Lehman Brothers  
McDonald & Co. Securities  
Merrill Lynch & Co.  
Morgan Keegan, Inc.  
The Ohio Company  
Oppenheimer & Co., Inc.  
Paine Webber Group Inc.  
Piper Jaffray Inc.  
The Principal/Eppler, Guerin & Turner, Inc.  
Prudential Securities Inc.  
Quick & Reilly, Inc.  
Raymond James Financial  
Robinson-Humphrey  
Roney & Co.  
Charles Schwab Corporation  
Scott & Stringfellow, Inc.  
Smith Barney Shearson  
Stifel, Nicolaus  
Sutro & Co.  
T. Rowe Price  
Tucker Anthony

**Waterhouse Securities**  
**Wheat First Butcher Singer**



## Appendix II

### Self-Regulatory Organizations Responding to Questionnaire

American Stock Exchange  
Boston Stock Exchange  
Chicago Stock Exchange  
Cincinnati Stock Exchange  
Municipal Securities Rulemaking Board  
National Association of Securities Dealers  
New York Stock Exchange  
Pacific Stock Exchange  
Philadelphia Stock Exchange